

**JUDGE ROMAN**

14 CV 3211

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN ANDRES,

Docket No.



Plaintiffs,

**COMPLAINT**

BANK OF NEW YORK MELLON,  
as Trustee for the Certificate Holders  
CWHEQ REVOLVING HOME LOAN  
TRUST 2005-G, BANK OF AMERICA  
AND BAC HOME LOANS SERVICING,  
LP,

**Jury Trial Requested**

Defendants.

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Plaintiff, JOHNANDRES (hereinafter "Plaintiff"), by his undersigned counsel, DAVID M. SCHLACHTER, ESQ. of LAW OFFICES OF DAVID M. SCHLACHTER, LLC, for his Complaint alleges, upon personal knowledge as to himself and his own acts and upon information and belief as to all other matters, as follows:

**NATURE OF ACTION**

1. This matter is an Action for Quiet Title, fraud, wrongful indebtedness, wrongful collection on a mortgage, slander of title, slander of credit, unjust enrichment and other rights and remedies against Defendants, who have fraudulently asserted possessory interests in the debt obligations securing the Plaintiff's real property, induced the Plaintiff to rely on the fraudulent assertions, induced Plaintiff to pay their mortgage debt obligations to parties who

have no cognizable claim to those debts, induced Plaintiff to sign a Loan terms against Plaintiff's best interests, have subjected Plaintiff to fraudulent debt obligations while remaining liable for legitimate debt obligations securing their real property, and unjustly enriching the Defendants as a direct consequence of the Defendants' fraudulent assertions.

2. Plaintiff is an individual who resides at 4349 Mt. Carmel-Tobacco Road, Cincinnati, Ohio 45244.

3. Upon information and belief, Defendant Bank of New York Mellon is an enterprise located at One Wall Street, in the County of New York, State of New York 10005.

4. Upon information and belief, Defendant BAC Home Loans, LP and Bank of America, N.A. ("BAC") are linked through corporate governance, and are a bank and is located at 100 North Tryon Street, Charlotte, North Carolina 28202.

5. The crux of the cause of action derives from the actions taken by Defendant to prepare the Note to be traded as a mortgage-backed security on Wall Street, located in the Southern District of New York.

### **JURISDICTION AND VENUE**

6. Plaintiff brings this matter to the United States District Court based upon 28 U.S.C. Sec. 1332, based on diversity jurisdiction as the Defendants are incorporated and their principal places of business are in different States from Plaintiffs' domicile and the amount in dispute exceeds \$75,000. Venue is proper because subject mortgage was securitized on the New York Stock Exchange in this Jurisdiction.

### **CLAIMS**

7. On or about June 20, 2005 Plaintiff obtained a note and mortgage Countywide Home Loans, LP on his primary residence in the amount of \$88,000.

8. The Mortgage, however, was initiated by Mortgage Electronic Registration Systems, Inc. ("MERS") as lender's sole nominee.

9. By assignment dated February 15, 2012 for value allegedly received, MERS assigned the mortgage to Defendant BAC Home Loans, LP.

10. Upon information and belief, based on a public record search no value or consideration was exchanged between Defendant BAC and MERS.

11. However, MERS does not have authority to assign the mortgage or initiate the Note and Mortgage, and it is therefore legally null.

12. The assignment was executed by an alleged employee of MERS.

13. Defendant BAC did send mortgage statements to Plaintiff.

14. Upon such reliance Plaintiff paid money to Defendant BAC.

15. As Defendants do not own the Note and Mortgage, it cannot collect any money.

16. Defendants have been unjustly enriched by their collecting on a mortgage that is not owned by Defendants.

17. Furthermore, upon information and belief, upon a public search it appears this Note is being held by Defendant Trust, CWHEQ Revolving Home Loan Trust 2005-G.

18. Defendant Bank of New York Mellon is the trustee for the Trust.

19. Upon information and belief there are no proper assignments and/or indorsements that exist giving legal possession to the Trust or Defendant Bank of New York Mellon.

20. The Note was assigned to a trust in order to create a mortgage-backed security to trade on the New York Stock Exchange.

COUNT ONE – Wrongful Collection Practice

21. Plaintiff re-alleges all allegations made thus far.

22. The note in this matter was never assigned, legally and properly, to Defendant BAC or Bank of America or to Defendant Trust or Trustee.

23. As the mortgage follows the note, Defendants have no rights to enforce collection on the Note or the Mortgage.

24. Defendant cannot sue Plaintiff for foreclosure.

Wherefore, Plaintiff seeks an Order of judgment for damages, punitive damages, against Defendant for the wrongful collection and wrongful prosecution of a foreclosure action, and for other such relief as this Court seems proper.

#### COUNT TWO – Quite Title

25. Plaintiff re-alleges all allegations made thus far.

26. MERS has no authority to assign mortgages.

27. MERS “acting as nominee” has no legal affect.

28. The note was not assigned but only the mortgage.

29. The assignments are surrounded by the suspicion of fraud.

30. Title, thus, never transferred to Defendant.

Wherefore, Plaintiff seeks an Order of judgment for damages, punitive damages, and special damages against Defendant and an injunctive Order of Quiet Title of the Note and Mortgage, and other such relief as the Court deems proper.

#### COUNT THREE - FRAUD

31. Plaintiff re-alleges all allegations made thus far.

32. Defendant knew or should have known it does not possess true, legal title to the collection on the subject mortgage.

33. Defendant continued to send notices to collect from Plaintiff anyway.

34. When Plaintiff stopped paying the mortgage Defendant called Plaintiff several times a day.

35. Defendant sent letters to Plaintiff to try to induce Plaintiff to pay money to Defendant.

36. Defendant violated the Fair Debt Collection Practice Act by these actions.\

37. Further, Defendant BAC and Bank of America has defrauded by Plaintiff by failing to indicate that the Note was allegedly being held by a Trust.

Wherefore, Plaintiff seeks an Order of judgment for damages, punitive damages, against Defendant for the wrongful collection practices, harassment, and fraudulent inducement, and other such relief as this Court deems proper.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

- a) Quieting title against Defendants;
- b) Expunging the debt obligations and instruments asserted by Defendants against Plaintiff's subject property from the record;
- c) Granting damages to Plaintiff for Defendants' fraud;
- d) Granting damages to Plaintiffs for Defendants unjust enrichment;
- e) Granting punitive damages for the conduct and fraud.
- f) Granting attorney's fees to Plaintiff.
- g) Other relief that this Court deems proper.

#### **DEMAND FOR A TRIAL BY JURY**

Plaintiff demands a trial by jury.

Dated: New York, New York  
June 1, 2013

By   
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**SUMMONS / COMPLAINT**

This certifies under the Fed. R. Civ. P. that this pleading is not made frivolously under law and it is only made in good faith.

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